

PATENTS  
112025-0138  
1584

### REMARKS

This Amendment is filed in response to the Office Action mailed on March 10, 2004. All objections and rejections are respectfully traversed.

Claims 1-30 are in the case.

Claims 1, 8, and 18 were amended to better claim the invention.

Claims 21-30 were added to better claim the invention.

Claims 13-17 are allowed.

Applicant respectfully notes that Applicant filed, on April 28, 2004, a Petition to the Director to correct the filing date of the above referenced Application for U.S. Patent to read July 1, 1999. The Petition reads substantially as follows:

#### PETITION TO CORRECT FILING DATE

Applicants hereby petition to correct the filing date of the above-identified application. Although this application was accorded a filing date of June 30, 1999, the correct filing date should be July 1, 1999 (one day later), which is the date on which the last part necessary to complete this application was received by the Patent and Trademark Office. In particular, the papers corresponding to this application incorporate by reference a second patent application that, although intended to be filed on the same day as the present application, was not in fact filed until July 1, 1999. Because this second application represents a necessary part of the present application, the correct filing date of the present application is actually July 1, 1999.

A. The Materials Filed On June 30, 1999 Incorporate A Second Patent Application By Reference.

PATENTS  
112025-0138  
1584

On June 30, 1999, Applicants submitted a specification (31 pages), drawings (7 sheets) and 17 claims by Express Mail pursuant to 37 C.F.R. §1.10. The Patent and Trademark Office assigned Application Serial No. 09/345,193 to these papers and accorded a filing of June 30, 1999. The specification filed on June 30, 1999, however, refers to, and incorporates by reference, a second application. More specifically, the specification of June 30, 1999 states as follows:

To the extent source and destination ports are used by entities 202 and 204, the port numbers are preferably selected in accordance with commonly owned and co-pending U.S. Patent Application Ser. No. [insert serial number] entitled A Protocol to Coordinate Network End Points to Measure Network Latency, which is hereby incorporated by reference in its entirety.

See Specification at page 14, lines 14-18 attached hereto as Exhibit A.

Later on at p. 22, the specification of June 30, 1999 refers to the second application as disclosing a preferred embodiment of an aspect of the invention, as follows:

In the preferred embodiment, the format of the test message corresponds to the Network Endpoint Control Protocol (NECP), as described in previously referenced and incorporated U.S. Patent Application Ser. No. [insert serial number].

See Specification at page 22, lines 3-6 attached hereto as Exhibit B. Reliance on a commonly assigned copending application for the purpose of completing a disclosure is permitted by the MPEP. See MPEP §608.01(p).

B. The Second Application Was Not Filed Until July 1, 1999

At the time, it was intended that these two applications would be filed on the same date, i.e., on June 30, 1999. It turns out, however, that the second application was not filed until July 1, 1999, i.e., one day later. More specifically, the second application was filed on July 1, 1999 by Express Mail pursuant to 37 C.F.R. §1.10. A copy of the filing receipt issued for the second application is attached hereto as Exhibit C.

This condition was apparently not discovered by the Patent and Trademark Office, and was only just discovered by counsel for the applicants. Upon learning of this situation, counsel for the applicants worked expeditiously to prepare and file this Petition to correct the filing date.

C. The Filing Date Of The Present Application Should Be Corrected To July 1, 1999

The rules of the Patent and Trademark Office as well as the long standing practice of the Office provide that papers claiming to be an application for patent will not be accorded a filing date until a complete appli-

PATENTS  
112025-0138  
1584

cation is received by the Patent and Trademark Office. See 37 C.F.R. §1.53; In re Bosie, 207 U.S.P.Q. 1139, 1141 (Comm'r Pat. & Trademarks 1979) (holding that by long standing practice of the Office, the "filing date of an incomplete application is the date on which the last part completing the application is filed in the Office.") The Court of Appeals for the Federal Circuit has similarly ruled that the "filing date of [a patent] application is the date on which the *complete* application, acceptable for placing in the files for examination is received in the Patent and Trademark Office; or the date on which the *last part completing* such application is received". Litton Systems, Inc. v. Whirlpool Corp., 728 F. 2d 1423, 1437; 221 U.S.P.Q. 97, 105 (Fed. Cir. 1984).

Because the second application describes the preferred embodiment of an aspect of the present invention, the second application contains material that is essential to the specification filed June 30, 1999. See MPEP §608.01(p) (defining "essential material" as that which describes the claimed invention, provides an enabling disclosure or describes the best mode). This essential material, however, was not received by the Patent and Trademark Office until the next day, i.e., July 1, 1999. Accordingly, the present application was not complete until then. See MPEP §506. In these circumstances, the correct filing date of the present application should be July 1, 1999, which is the date on which the last part of the application was received by the Patent and Trademark Office.

By virtue of the foregoing, Applicants respectfully request that the filing date of the present application be corrected to July 1, 1999.

Applicants submit a check in the amount of \$130 to cover the petition fee set forth at 37 C.F.R. §1.17(h).

The Examiner is requested to act upon this information in any appropriate manner, for example by, correcting the filing date, performing another search, etc.

At paragraphs 1-2 of the Office Action claims 1-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Christie U. S. Patent No. 6,185,219 issued February 6,

PATENTS  
112025-0138  
1584

2001 (hereinafter Christie), in view of Kompella *et al.* U. S. Patent No. 5,892,754 issued April 6, 1999 (hereinafter Kompella).

The present invention, as set forth in representative claim 1, comprises in part:

1. A method for determining latency of a selected path in a computer network having a plurality of network nodes, the computer network further including a first entity disposed at one end of the selected path and a second entity disposed at a second end of the selected path, the method comprising the steps of:

utilizing at least one path state set-up message formulated by the first entity and passed to each network node along the selected path to establish a path state at each network node along the selected path for identifying a traffic flow having predefined parameters;

*implementing a source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing;*

forwarding messages matching the predefined parameters of the traffic flow to a next downstream network node along the selected path;

generating a test message at the first entity, the test message addressed to the second entity and configured in accordance with the predefined parameters of the traffic flow;

placing a time record in the test message;

transmitting the test message from the first entity;

in response to receiving the test message at each network node, forwarding the test message from the receiving network node to the next downstream network node along the selected path by virtue of the previously established path states;

in response to receiving the test message at a last downstream network node along the selected path, forwarding the test message to the second entity by virtue of the previously established path states; and

using the time record placed in the test message to determine the latency of the selected path.

Christie discloses a network signaling system. The system processes network signaling in processors outside of the switches.

PATENTS  
112025-0138  
1584

Kompella discloses a network transmission system for packets, where the system monitors parameters of the network and modifies its transmission strategy in response to the measurements. The strategy helps the system maintain quality of service parameters within a specified range.

Further, Applicant claims a *routing option . . . the source routing option to provide a choice between strict source routing and loose source routing*. Applicant respectfully urges that neither Christie nor Kompella have any disclosure of Applicant's claimed novel *routing option*.

Applicant respectfully urges that neither Christie nor Kompella disclose Applicant's claimed novel *implementing a source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing*.

That is, Applicant includes in his path state setup message a source routing option, and neither Christie nor Kompella disclose such an option.

Accordingly, Applicant respectfully urges that Christie and Kompella, taken either singly or in combination, are legally precluded from rendering the presently claimed invention obvious under 35 C.F.R. 103(a) because of the absence from both of Appli-

PATENTS  
112025-0138  
1584

cant's claimed novel *implementing a source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing.*

At page 3 of the Office Action claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Christie in view of Kompella, and further in view of Masters *et al.* U. S. Patent No. 5,920,697 issued July 6, 1999 (hereinafter Masters).

Applicant respectfully notes that claim 3 is dependent from an independent claim believed to be in condition for allowance. Accordingly, Claim 3 is believed to be in condition for allowance.

At page 5 of the Office Action claims 8 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Christie in view of Masters.

Masters discloses a method of updating routing information in sites of a network system. Updating is accomplished by a site sending it's routing information to other sites.

Applicant respectfully urges that Masters does not disclose Applicant's claimed novel *implementing a source routing option to include in the path state setup message,*

PATENTS  
112025-0138  
1584

*the source routing option to provide a choice between strict source routing and loose source routing.*

Further, Applicant notes that Masters simply updates sites in the network with routing information sent to that site by other sites. That is, Masters has no disclosure of Applicant's *source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing.*

Still further, Applicant respectfully urges that neither Christie nor Masters disclose Applicant's claimed novel *implementing a source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing.*

Accordingly, Applicant respectfully urges that Christie and Masters, taken either singly or in combination, are legally precluded from rendering the presently claimed invention obvious under 35 U.S.C. 103 (a) because of the absence from each of Applicant's claimed novel *implementing a source routing option to include in the path state setup message, the source routing option to provide a choice between strict source routing and loose source routing.*

PATENTS  
112025-0138  
1584

At page 6 of the Office Action claims 10-12 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Christie in view of Masters, and further in view of McCloghrie *et al.* U.S. Patent No. 6,286,052 B1 issued September 4, 2001.

Applicant respectfully notes that claims 10-12 and 20 are dependent from independent claims believed to be in condition for allowance. Accordingly, claims 10-12 and 20 are believed to be in condition for allowance.

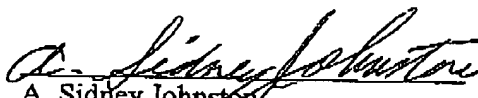
All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

  
A. Sidney Johnston  
Reg. No. 29,548  
CESARI AND MCKENNA, LLP  
88 Black Falcon Avenue  
Boston, MA 02210-2414  
(617) 951-2500

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**